

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 209 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

NATUBHAI KESARABHAI SANGADA

Versus

STATE OF GUJARAT

Appearance:

MS SMITA R PATEL for Petitioner
PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 28/03/2001

ORAL JUDGEMENT

#. Rule. Public Prosecutor waives service of rule on behalf of respondents. Heard the learned counsel for the respondents and perused the special criminal application.

#. The petitioner applied for his due furlough leave but

that application came to be rejected under the order of I.G. Prisons dated 29-12-2000. This application has been filed by the petitioner through advocate and it is not through jail. The petitioner admitted that his application for furlough was rejected on 29-12-2000 but the copy of that order has not been produced on the record. Unless that order is produced how the contents thereof can be known by the court. Otherwise also, without knowing the grounds how that order can be set aside by the Court. If the Court is satisfied on the merits of the matter then only this Court can give direction for release of petitioner on furlough. In the absence of the order, no such relief as prayed for in the petition can be granted. Be that as it may.

#. If what the petitioner stated that his application for furlough leave was rejected on the ground of adverse police opinion and the Sarpanch has not recommended for his release, it is suffice to say that Sarpanch has no role to play in such matters. Subrule (4) of Rule 4 of Bombay Furlough and Parole Rules, 1959, is very clear and Sarpanch does not play any role in these matters. To rely on the opinion of the Sarpanch otherwise also is very risky as he is a representative of people and he cannot afford to displease any of his voters in his area. When Rule nowhere requires the opinion of the Sarpanch is to be called re. release of the prisoner on furlough how far it is justified to call for such a report or to give such a report by the Sarpanch. This is certainly an extraneous consideration which has been taken into consideration by the I.G. Prisons for rejection of application of the petitioner if what it is stated is correct.

#. So far as the second ground given if it is correct then before relying on the adverse police report, the I.G. Prisons has to send a copy thereof together with the material on the basis of which an opinion has been formed by the Police Officer against the prisoner, to the prisoner and after considering the objections, if any, filed against the report by him, the order has to be passed. This has also not been done in the present case.

#. The interest of justice will be served in case this petition is disposed of in terms that in case the application of the petitioner for furlough leave is rejected on the grounds aforesaid, the I.G. Prisons, Gujarat State, Ahmedabad is directed to decide the matter afresh after excluding the opinion of Sarpanch and give a copy of the adverse police report together with the relevant material on the basis of which the opinion has

been formed to the petitioner, and thereafter considering the objections if any filed by the petitioner. This whole exercise is to be completed by the I.G. Prisons, Gujarat State, Ahmedabad within a period of one month from the date of receipt of writ of this order. Rule stands disposed of in the aforesaid terms with no order as to costs.

zgs/-